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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/911,824	08/15/1997	JOHN R. HACKETT, JR.	6165.US.01	4028
23492	7590	06/03/2004	EXAMINER	
STEVEN F. WEINSTOCK ABBOTT LABORATORIES 100 ABBOTT PARK ROAD DEPT. 377/AP6A ABBOTT PARK, IL 60064-6008			HILL, MYRON G	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/911,824

Applicant(s)

HACKETT, JR. ET AL.

Examiner

Myron G. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 20, 2004 has been entered.

A telephone call was placed to Lisa Mueller on May 18, 2004 to ask about the term HIV-1 Type "1" or "I" in the claims because it appeared to be an amendment without annotation or a typographical error. Applicant faxed in a Supplemental Amendment that corrected the typographical error in the claims.

Claims 1 and 2 are pending.

Allowable Subject Matter

Upon reconsideration, the indication of allowable subject matter in the previous action is withdrawn because of a reassessment of claim interpretation. See the 35 U.S.C. 102(a) rejection below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. Does claim 2 require SEQ ID# 61 and an additional portion of the same polypeptide? The sequence of SEQ ID# 61 inherently contains immunoreactive portions and thus, it is unclear how this added limitation further defines the invention because it is already present.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 and 2 are rejected under 35 U.S.C. 102(a) as being anticipated by DelaPorte *et al.* (EMBL/ NCBI Accession Number X96526, cited in Office Action mailed 12/2/02).

The claims are drawn to 1) a polypeptide comprising an amino acid sequence of SEQ ID# 61 and 2) a polypeptide comprising an amino acid sequence of SEQ ID# 61 and an immunoreactive portion contained in SEQ ID# 61.

The term “an amino acid sequence of SEQ ID# 61” of both claims is interpreted to mean not the whole sequence but only a part. If the claims were to read “comprising the amino acid sequence of SEQ ID# 61”, then the claims would require the whole sequence of SEQ ID# 61. Claim 2 is interpreted as requiring a polypeptide that contains a portion of SEQ ID# 61 and inherently contains a portion of itself that is immunoreactive.

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Applicant argues that claim 2 has been amended to include the allowable language of claim 1.

Applicant's arguments have been fully considered and not found persuasive.

The Office interprets the phrase "comprising an amino acid sequence of SEQ ID# 61" as not requiring the entire sequence of SEQ ID# 61.

The claims read on any isolated HIV-1 Group O *env* polypeptide that shares an immunoreactive portion (as few as 5 contiguous amino acids, page 9, lines 19- 25) with SEQ ID# 61.

The polypeptide of DelaPorte *et al.* (NCBI Accession Number X96526) anticipates the claims because it is also a HIV-1 Group O *env* polypeptide (Groups being determined by immunoreactivity) and the sequence is 83.5 % identical sharing many regions of 5 or identical amino acids. This also applies to claim 2 because claim 2 requires a polypeptide that contains part of SEQ ID# 61, not the entire sequence.

Thus, DelaPorte *et al.* anticipates the invention.

Conclusion

No claim is allowed.

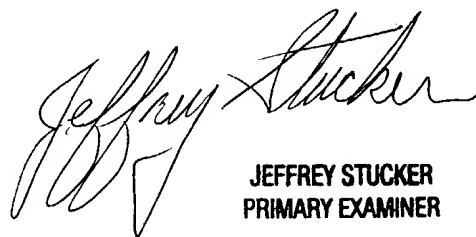
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Myron G. Hill whose telephone number is 571-272-0901. The examiner can normally be reached on 9am-6pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Myron G. Hill
Patent Examiner
May 28, 2004



JEFFREY STUCKER
PRIMARY EXAMINER